

104TH CONGRESS
2D SESSION

H. R. 3926

To amend title 10, United States Code, to require the separation from military service under certain circumstances of members of the Armed Forces diagnosed with the HIV-1 virus.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1996

Mr. DORNAN (for himself, Mr. HUNTER, Mr. CHAMBLISS, Mr. STEARNS, and Mr. CRANE) introduced the following bill; which was referred to the Committee on National Security

A BILL

To amend title 10, United States Code, to require the separation from military service under certain circumstances of members of the Armed Forces diagnosed with the HIV-1 virus.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REENACTMENT AND MODIFICATION OF MAN-**
4 **DATORY SEPARATION FROM SERVICE FOR**
5 **MEMBERS DIAGNOSED WITH HIV-1 VIRUS.**

6 (a) REENACTMENT AND MODIFICATION.—(1) Chap-
7 ter 59 of title 10, United States Code, is amended by in-
8 serting after section 1176 the following:

1 **“§ 1177. Members infected with HIV-1 virus: manda-**
2 **tory discharge or retirement**

3 “(a) MANDATORY SEPARATION.—(1) A member of
4 the Army, Navy, Air Force, or Marine Corps who is HIV-
5 positive shall be separated. Such separation shall be made
6 on a date determined by the Secretary concerned, which
7 shall be as soon as practicable after the date on which
8 the determination is made that the member is HIV-posi-
9 tive and not later than the last day of the second month
10 beginning after such date.

11 “(b) FORM OF SEPARATION.—If a member to be sep-
12 arated under this section is eligible to retire under any
13 provision of law or to be transferred to the Fleet Reserve
14 or Fleet Marine Corps Reserve, the member shall be so
15 retired or so transferred. Otherwise, the member shall be
16 retired under section 1201 or 1204 of this title, as applica-
17 ble to that member, with a disability rating of 30 percent
18 (unless the member is otherwise entitled to a higher rat-
19 ing) and with the member deemed to have met all other
20 requirements for retirement under that section. The char-
21 acterization of the service of the member shall be deter-
22 mined without regard to the determination that the mem-
23 ber is HIV-positive.

24 “(c) DEFERRAL OF SEPARATION FOR MEMBERS
25 WITHIN FIVE YEARS OF RETIREMENT ELIGIBILITY.—In
26 the case of a member to be retired under section 1201

1 or 1204 of this title pursuant to the second sentence of
2 subsection (b) who on the date on which the member is
3 to be so retired is within five years of qualifying for retire-
4 ment under any other provision of law, or of qualifying
5 for transfer to the Fleet Reserve or Fleet Marine Corps
6 Reserve under section 6330 of this title, the member may,
7 as determined by the Secretary concerned, be retained on
8 active duty until the member is so qualified for retirement
9 or transfer to the Fleet Reserve or Fleet Marine Corps
10 Reserve, as the case may be, and then be so retired or
11 transferred, unless the member is sooner retired or dis-
12 charged under any other provision of law.

13 “(d) SEPARATION TO BE CONSIDERED INVOLUN-
14 TARY.—A separation under this section shall be consid-
15 ered to be an involuntary separation for purposes of any
16 other provision of law.

17 “(e) COUNSELING ABOUT AVAILABLE MEDICAL
18 CARE.—A member to be separated under this section shall
19 be provided information, in writing, before such separation
20 of the available medical care (through the Department of
21 Veterans Affairs and otherwise) to treat the member’s
22 condition. Such information shall include identification of
23 specific medical locations near the member’s home of
24 record or point of discharge at which the member may
25 seek necessary medical care.

1 “(f) HIV-POSITIVE MEMBERS.—A member shall be
 2 considered to be HIV-positive for purposes of this section
 3 if there is serologic evidence that the member is infected
 4 with the virus known as Human Immunodeficiency Virus—
 5 1 (HIV-1), the virus most commonly associated with the
 6 acquired immune deficiency syndrome (AIDS) in the Unit-
 7 ed States. Such serologic evidence shall be considered to
 8 exist if there is a reactive result given by an enzyme-linked
 9 immunosorbent assay (ELISA) serologic test that is con-
 10 firmed by a reactive and diagnostic immunoelectrophoresis
 11 test (Western blot) on two separate samples. Any such se-
 12 rologic test must be one that is approved by the Food and
 13 Drug Administration.”.

14 (2) The table of sections at the beginning of chapter
 15 59 of such title is amended by inserting after the item
 16 relating to section 1176 the following new item:

“1177. Members infected with HIV-1 virus: mandatory discharge or retire-
 ment.”.

17 (b) EFFECTIVE DATE.—Section 1177 of title 10,
 18 United States Code, as added by subsection (a), applies
 19 with respect to members of the Army, Navy, Air Force,
 20 and Marine Corps determined to be HIV-positive before,
 21 on, or after the date of the enactment of this Act. In the
 22 case of a member of the Army, Navy, Air Force, or Marine
 23 Corps determined to be HIV-positive before such date, the
 24 deadline for separation of the member under subsection

1 (a) of such section shall be determined from the date of
2 the enactment of this Act (rather than from the date of
3 such determination), except that no such member shall be
4 separated by reason of such section (without the consent
5 of the member) before October 1, 1996.

